



The Voice of Small Business

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**Testimony on State Health Insurance Exchanges
Before the House Health Policy Committee
Thursday, October 20, 2011**

My name is Charlie Owens and I am the State Director for the National Federation of Independent Business, an advocate for Michigan small businesses owners since 1943. We are here today to give you a small business perspective on the establishment of state based health insurance exchanges under the federal Patient Protection and Affordable Care Act (PPACA).

At the outset and in the interest of full disclosure I would like to begin by informing the committee that the NFIB has been in litigation against the federal Patient Protection and Affordable Care Act (PPACA). On August the 11th Circuit Court of Appeals agreed with us that the individual mandate is unconstitutional. In late September we filed a petition asking the Supreme Court of the United States to hear our case challenging the constitutionality of the Patient Protection and Affordable Care Act (PPACA). On the same day the federal government filed their own petition also asking the Supreme Court to hear our case. If the Court agrees to hear the case, and we believe they will, then a decision is likely by June of 2012. A copy of the petition can be downloaded at <http://www.nfib.com/press-media/press-media-item?cmsid=58312>.

NFIB is the only business organization challenging the constitutionality of the Patient Protection and Affordable Care Act in court. It should be clear from the forgoing that we did not support the passage of this Act. In addition to our efforts in Court we have been, and are still, actively pursuing the repeal of the Patient Protection and Affordable Care Act.

In this context we offer our views to the committee concerning the establishment of a Michigan Health Care Exchange under the Act.

We were asked by the Committee chair to offer suggestions on how we would design an exchange if it were within our purview to do so:

1. There is no need to move quickly to establish a state exchange

We would contend that there is no need to act quickly as has been urged by some who have testified here and in front of the Senate Health Policy Committee as well. Indeed, had you acted quickly and implemented an exchange before July of this year, you would have been blindsided by the Health and Human Services (HHS) proposed exchange regulations issued in July that diminished some of the opportunities for a simpler, less complicated model. In fact, some have argued that under those proposed regulations, and more that could follow, a state would have no more real control over an exchange it set up than over one established by the federal government (HHS).

As you deliberate here today and during the rest of this year and into next year there are many unanswered questions, not the least of which is whether or not there will even be a Patient Protection and Affordable Care Act in existence:

- While just 24 months remain until exchanges must open for business, HHS has made little discernable progress toward creating federal fallback exchanges.
- Due to a recently discovered error in the statute, the new health care law only authorizes premium assistance in state-run exchanges — not federal exchanges.
- The PPACA provides that "essential health benefits" shall be defined by the Secretary of Health and Human Services. Outside of a list of ten general categories of benefits, the Secretary has not issued any regulations that further define essential health benefits.
- PPACA invests officials with power to exempt specific businesses from certain provisions. The Department of Health and Human Services has granted some, but not all, businesses "mini-med waivers," but has never explained the criteria by which waiver requests are granted or refused.
- Much of PPACA was written in general terms; regulators will spend years writing the specifics. Example: a business with 50 or more employees will owe tens or hundreds of thousands of dollars a year in insurance premiums and/or penalties. But whether or not a firm is under, over, or at 50 depends on as-yet-unwritten definitions of part-timers, temps, and seasonal workers.

2. Structure the exchange to the absolute minimum requirements under the Act

Implement the absolute minimum required under the act of which, as per item one above, you would have a clearer picture as the deadline date approaches.

We caution you and fellow lawmakers to be skeptical of proposals emerging from "stakeholders" and "workgroups" that seek to create a bloated, bureaucratic exchange that goes above and beyond the minimum federal requirements outlined in the PPACA. "Workgroups" and "stakeholders" are not elected and not accountable to taxpayers and citizens. The only workgroup that counts is you and your colleagues in the Senate and House.

While we may disagree with the Snyder administration on the need to move quickly, we commend them for taking a minimalist approach to the establishment of the exchange.

Other features:

- Keep small business and individuals in separate risk pools.
- Implement policies to avoid individuals crossing into the small group pool.
- The exchange should exist alongside the private market and not crowd it out.
- Unfair policy advantages between the exchange and the free market should be prohibited.
- Purchasers should be a majority interest in the governance of the exchange.
- Navigators should be subject to the same licensing rules for insurance agents.

3. Include sunset language in the exchange legislation and a constitutionality caveat

A sunset clause should be included in the legislation that would repeal the state exchange act and the exchange if the federal Patient Protection and Affordable Care Act is:

- Found unconstitutional by the Supreme Court
- Repealed by Congress.

In addition, language should be included in the preamble to the state exchange legislation or in the beginning sections that makes it clear that nothing in this act shall be construed or implied to recognize the constitutionality of the Patient Protection and Affordable Care Act. Such a provision is included in the Virginia Act.

Conclusion

You have heard much testimony from others that they also do not support the Act but do support the establishment of a state exchange to avoid the possibility of a federally run exchange being imposed if one is not in place by the required deadline.

At this time, NFIB will not support any exchange legislation that does not include the sunset clause and constitutionality language referenced in this testimony.

Thank you for the opportunity to share our views on this important issue and we look forward to working with you on making healthcare more affordable and available to all Michigan citizens.